



US Army Corps
of Engineers.

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

NUMBER: 175871N DATE: December 10, 2001
RESPONSE REQUIRED BY: January 9, 2002

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

PERMIT MANAGER: Beth Dyer PHONE: 415-977-8451 edyer@spd.usace.army.mil

1. INTRODUCTION: MLBH Windsor Creek Limited Partnership (point of contact: Mr. Michael Bianucci, 6934 Burnett Street, Sebastopol, California 95472; authorized agent: Steve Foreman, LSA Associates, Inc., 157 Park Place, Pt. Richmond, California 94801) has applied to the Department of Army to amend existing permit 17587N96 in order to increase the discharge of material from 400 cubic yards to approximately 900 cubic yards of material and increase fill from 0.58 acre to 0.72 acre of jurisdictional seasonal wetlands and 0.05 acre of other waters. The applicant is also requesting to shift approved onsite wetland mitigation to an offsite location at the Sonoma County Airport Consolidated Mitigation Area (SACMA). Other components of the existing permit 17587N96 work remaining to be completed would be included in the revised permit. This work includes excavation and placement of structural fills related to installation of a stormwater outfall, and two road crossings in other waters.

The project site is a 27.71 acre parcel adjacent to Windsor and East Windsor creeks located between U.S. Highway 101 and the Northwestern Pacific Railroad in Windsor, Sonoma County, California (see attachments, Sheet 1). The Windsor Creek residential project was authorized under Corps permit 17587N96 issued to Calton Homes on June 28, 1996 (Sheet 5). In 1998, MLBH Windsor Creek Limited Partnership (MLBH) purchased the project and the Corps permit was transferred to MLBH on July 17, 1998. A time extension for permit 17587N96 was granted by the Corps on January 27, 1999. The expiration date of the extended permit is April 10, 2002. The permitted project is a 64-unit, single-family detached subdivision. Construction of Phase I of the project, consisting of 45 units, was completed in January 2001 (see Sheet 5).

Final design review approval for Phase II (19 units) has been procured and the improvement plans and final map for the project are reported by the applicant to be 90% complete. However, new information from current

program reports by Boyle Engineering for the Town of Windsor's master storm drain improvements on Windsor Creek has determined the approved roadway for Phase 2 will be subject to unacceptable levels of flooding in a 10 year storm event (Sheets 4 and 6). Previous information considered in the original permit evaluation indicated that this roadway and associated residential uses were outside of the projected 100 year flood zone.

This permit application to modify the existing individual permit 17587N96 is being evaluated pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344)

2. PROJECT DESCRIPTION: The Windsor Creek project is a 64 unit single family detached residential development. As shown in the attached drawings MLBH proposes to setback the Phase II development farther from Windsor Creek in order to reduce roadway flooding to acceptable level (Sheets 4 and 6). This increased setback would shift the development into a portion of the previously approved wetland preserve/mitigation area and result in filling all 0.72 acre of seasonal wetlands (winter-ponded depressions supporting species characteristic of vernal pools, and deeper depressions within channels that support more widespread and less specialized freshwater marsh plants) on the property (Sheets 2, 4 and 5). The applicant is also requesting to shift the location of five lots to an approximately 0.6 acre area, containing 0.05 acre of other waters of the U.S., that was originally set aside as a open space preservation area along an old abandoned creek channel in the original permit (Sheets 4 and 5). Specific project activities to be covered under the application for the revised permit include:

(1) Fill of 0.05 acre of old stream channel (a cutoff side channel of East Windsor Creek) for construction of five relocated residential lots (lots 15 to 19, Sheets 2, 4, and 5);

(2) Installation of two pre-cast arch culvert sections across East Windsor Creek and Windsor Creek at New Bell Road, with an excavation of a total of 490 cubic yards of earth and structural fill in Corps jurisdiction (215 cy in East Windsor Creek, 275 cy in Windsor Creek) and an equal amount of backfill and 18" thick layer of rip-rap (Sheet 5);

3) Installation of a secondary 24" outlet culvert to supplement storm water runoff from the site to Windsor Creek (Sheet 5).

Other activities in Corps jurisdiction authorized under the existing permit 17587N96 have already been completed. These activities include fill of 0.58 acre of seasonal wetland, construction of the intake and outfall structures for the twin 72" flood bypass culverts on East Windsor Creek, and the pipe and road crossing of the old cutoff channel of East Windsor Creek (Sheet 5).

3. MITIGATION: To compensate for the loss of the 0.72 acre of seasonal wetlands, the applicant has purchased 0.72 acre of constructed/restored wetland at the Sonoma County Airport Consolidated Mitigation Area (SACMA) near Windsor and proposes to purchase the equivalent of 2:1 or 1.5 acre of preservation credits at the Wright Mitigation Bank or other approved preservation bank. The proposed mitigation would be in compliance with the mitigation requirements contained in the Santa Rosa Plain Programmatic Biological Opinion issued by the U.S. Fish & Wildlife Service, July 17, 1998.

This mitigation would replace the currently approved onsite mitigation which would entail construction of a minimum of 0.58 acre of wetland and preservation of 0.14 acres on a 4.8 acre onsite mitigation area (Sheet 5).

While the original Public Notice generally considered offsite mitigation preferable, the only off-site mitigation bank available at that time was the Wikiup Bank. The project review staff from the Corps, U.S. Fish and Wildlife Service, and California Department of Fish and Game did not consider the Wikiup Bank to be suitable because of the differences in wetland characteristics between the Wikiup Bank and the project site. A main consideration was the general setting of the project site, where seasonal wetlands and adjacent grasslands are situated near riparian habitats and a creek. These conditions are not present at the Wikiup bank site. Given the lack of availability of viable and practicable offsite alternatives, the onsite mitigation

plan was considered preferable, was approved and made a condition of Permit 17587N96.

The SACMA site is located within a similar geographic setting. The site is adjacent to Redwood Creek and the creek supports a well developed riparian zone. Numerous mature and sapling oaks are also present on the SACMA site similar to the Windsor Creek site. The site has also demonstrated establishment of wetland and vernal pool vegetation, including 11 pools where Burke's goldfields (*Lasthenia burkei*) were documented in the first two growing seasons following inoculation with soil salvaged from the Andromeda Development Corporation, Westwind Business Park Building F project site (Corps permit 23495N). The salvaged soil was provided by the Department of Fish and Game for use at the SACMA site.

The acreage differences between the approved and proposed mitigation alternatives are summarized below:

	Onsite Mitigation Permit 17587N96	Offsite Mitigation Revised Project
Wetland Fill	0.58 acre	0.72 acre
Constructed Wetland	0.58 acre (1:1)	0.72 acre (1:1)
Preserved Wetland	0.14 acre (0.24:1)	1.5 acres (2:1)
Preserve Area Size	4.8 acres	3.3 acres

According to the applicant, the onsite mitigation plan, is not practicable with the proposed changes in the Phase II site design which he considers necessary to avoid the unacceptable levels of flooding on the Phase II street. The size of the previously approved contiguous mitigation area would be reduced to approximately 3.3 acres and the majority of the area approved for wetland construction would be eliminated.

Three uncommon vernal pool species, California linderiella (*Linderiella occidentalis*), Lobb's aquatic buttercup (*Ranunculus lobbii*), and Douglas' pogogyne (*Pogogyne douglasii* ssp. *parviflora*), grow in the vernal pools on the project site. For impacts to California linderiella and Douglas' pogogyne, the applicant is proposing to salvage individuals and soils from the pools supporting these species and transplant to existing suitable pools on the SACMA site.

In addition to the offsite mitigation, the revised plan would retain approximately 5 acres of the site in natural open space: approximately 3.3 acres of oak woodland along East Windsor Creek and encompassing the remaining segment

of the old cutoff channel (Sheet 4, Parcel B), and 1.7 acres of creek setback averaging 150 feet in width along Windsor Creek (Sheet 4, Parcel A). The applicant is proposing planting of oaks and other native riparian trees in this setback along Windsor Creek to compensate for the loss of the riparian habitat along the 0.05 acre (250 linear feet) of cutoff channel.

4. STATE APPROVALS: State water quality certification or a waiver of certification is required prior to issuance of a USACE permit for any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). On June 25, 1996, the North Coast Regional Water Quality Control Board issued a Section 401 waiver for the original project permit 17587N96. The applicant will be consulting with the North Coast Board concerning any revisions to the waiver that may be necessary as a result of the modified project. No Corps permit will be granted until the applicant obtains the required certification or waiver. A waiver shall be explicit, or it will be deemed to have occurred if State fails or refuses to act on a valid request for certification within 60 days after receipt of a valid request for certification, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should be directed to the Executive Officer, California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Blvd. Santa Rosa, California 95403, by the close of the comment period.

5. CONSIDERATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the effects of this proposed activity. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny the authorization for this mitigation bank proposal. To make this decision, comments are used to assess effects on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

6. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to the San Francisco District, Regulatory

Branch, North Section, citing the applicant's name and public notice number in the letter. Comments may include a request for a public hearing on the project prior to a determination on the application; such requests shall state, with particularity, the reasons for holding a public hearing. All comments will be forwarded to the applicant for resolution or rebuttal. Details on any changes of a minor nature which are made in the final permit action will be provided on request. Other information may be obtained from the applicant or by contacting Beth Dyer of our office at telephone (415) 977-8451 or by email at edyer@spd.usace.army.mil